

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF PUERTO RICO**

In re: BETTERROADS ASPHALT, LLC. Involuntary Debtor	Case No. 17-04156(ESL) Chapter 11
In re: BETTERECYCLING CORPORATION Involuntary Debtor	Case No. 17-04157(ESL) Chapter 11

STATEMENT OF UNCONTESTED MATERIAL FACTS

**TO THE HONORABLE UNITED STATES
BANKRUPTCY COURT:**

COME NOW, Firstbank Puerto Rico (“Firstbank”), Banco Santander de Puerto Rico (“Banco Santander”), the Economic Development Bank for Puerto Rico (“EDB”), and Banco Popular de Puerto Rico (“Banco Popular” or the “Administrative Agent”, and collectively with Firstbank, Banco Santander and EDB, the “Lenders”) through their undersigned counsel, and pursuant to Local District Rule 56(b), as made applicable to the instant proceedings by virtue of Local Bankr. R. 1001-1(b), hereby submits its “Statement of Uncontested Material Facts” in support of its “Motion for Summary Judgment”:

A. Betterods Asphalt, LLC

1. On June 9, 2017 (the “Petition Date”), St. James Security Services, Inc., Sargeant Marine, Inc., Sargeant Trading Ltd, and Facsimile Paper Connection, (collectively, the “Betteroads’ Final Judgment Creditors”) and the Lenders, filed an involuntary bankruptcy petition against Betteroads (the “Betteroads’ Involuntary Petition”). See, **Exhibit A**, Betteroad’s Involuntary Petition.

2. St. James Security, Inc., a petitioning creditor, is the holder of a final and unappealable judgment against Betterroads in the amount of \$184,242.84, issued on December 8, 2016 by the Puerto Rico Court of First Instance, San Juan Section, under Case No. K CD2016-0453. See, Exhibit B.

3. Sargeant Marine, Inc., a petitioning creditor, is the holder of a final and unappealable judgment confirming an arbitration award against Betterroads in the amount of \$165,074.84, issued on September 3, 2015 by the U.S. District Court for the Southern District of New York. See, Exhibit C, Decision and Final Award. See also Exhibit D, Judgment issued by the U.S. District Court for the Southern District of New York.

4. Sargeant Trading Ltd, a petitioning creditor, is the holder of a final and unappealable judgment confirming an arbitration award against Betterroads in the amount of \$104,355.38, issued on September 3, 2015 by the U.S. District Court for the Southern District of New York. Case No. 15-4879 (S.D.N.Y). See, Exhibit C, Decision and Final Award. See also Exhibit D, Judgment issued by the U.S. District Court for the Southern District of New York.

5. Facsimile Paper Connection Corp., a petitioning creditor, is the holder of a final and unappealable judgment against Betterroads in the amount of \$9,874.80 issued on January 11, 2017 by the Puerto Rico Court of First Instance, San Juan Section, under Case No. K CM2016-3675. See, Exhibit E.

6. On June 27, 2017, the Puerto Rico Electric Power Authority filed Proof of Claim No. 2 in the amount of \$36,768.53. See, Proof of Claim No. 2.

7. On June 28, 2017, Triple-S Salud, Inc. filed Proof of Claim No. 3 in the amount of \$53,590.11. See, Proof of Claim No. 3

8. On June 29, 2017, Internal Revenue Service filed Proof of Claim No. 4 in the amount of \$668,599.40. See, Proof of Claim No. 4

9. On July 5, 2017, the Puerto Rico Telephone Company d/b/a Claro, filed Proof of Claim No. 5 in the amount of \$1,173.58. See, Proof of Claim No. 5

10. On July 7, 2017, NY Wiping Industrial Products, filed Proof of Claim No. 6 in the amount of \$2,756.45. See, Proof of Claim No. 6

11. On July 10, 2017, World Professional Group, LLC, filed Proof of Claim No. 7 in the amount of \$72,200.00. See, Proof of Claim No. 7

12. On July 13, 2017, Total Petroleum Puerto Rico, Corp., filed Proof of Claim No. 8 in the amount of \$339,476.80. See, Proof of Claim No. 8

13. On July 17, 2017, BMW Financial Services NA, LLC, filed Proof of Claim No. 9 in the amount of \$4,190.45. See, Proof of Claim No. 9

14. On August 8, 2017, NG Solutions, LLC, filed Proof of Claim No. 10 in the amount of \$902,858.33. See, Proof of Claim No. 10

15. On September 13, 2017, S&S Imports, Inc., filed Proof of Claim No. 11 in the amount of \$12,126.87. See, Proof of Claim No. 11

16. On September 18, 2017, LSJE, LLC, filed Proof of Claim No. 12 in the amount of \$170,833.22. See, Proof of Claim No. 12

17. On October 24, 2017, Puma Energy Caribe, LLC, filed Proof of Claim No. 13 in the amount of \$2,566,884.21. See, Proof of Claim No. 13

18. On October 25, 2017, CRIM filed Proof of Claim No. 14 in the amount of \$24,849.32. See, Proof of Claim No. 14

19. On October 25, 2017, CRIM filed Proof of Claim No. 15 in the amount of \$446,587.28. See, Proof of Claim No. 15

20. Documents produced by Betterroads as part of the ongoing discovery proceedings also include an ‘Aging Report’ on (allegedly) all of Betterroads’ ‘Aged Open Payables’ for fiscal year 2017. In such report, Betterroads lists (allegedly) all of its outstanding and current debts, and the length of time in which such debt has remained outstanding.¹ In summary, the reports shows:

<u>Aged Open Payables – Aging Report as of 6/30/2017</u>				
<u>Total</u>	<u>Current</u>	<u>31-60 days</u>	<u>61-90 days</u>	<u>Over 90 Days</u>
\$11,139,712.94	\$826,333.96	\$168,594.99	\$6,732.30	\$10,073,646.65

See, **Exhibit F**.

21. The ‘General Ledger Reconciliation’ included in the ‘Aging Report’ ending on June 30, 2017 produced by Betterroads, reflects that (by its own admission, at least) 90.4% of Betterroads’ debts are over 90 days old. See, **Exhibit F** at Page 7.

22. The Debtors have accumulated a substantial amount of litigation related to claims from suppliers and other entities. As of the Petition Date, dozens of pending legal actions have been commenced against Betterroads before the Puerto Rico Court of First Instance, as well as before the U.S. District Court for the District of Puerto Rico. See, **Exhibit G**.

23. On June 27, 2017, Betterroads filed a “Motion of the Alleged Debtor Betterroads Asphalt, LLC to Dismiss the Involuntary Bankruptcy Petition” (the “Betterroads’ Motion to Dismiss”). See Docket No. 46, Case No. 17-04156(ESL).

B. Betterrecycling Corporation

¹ The Lenders are presenting these documents produced by the Debtors as they provide an admission that they are not paying their debts as they become due, as detailed below. The Lenders reserve the right to challenge the accuracy or completeness of these documents as, based on a preliminary review, the Lenders note that the list of debts produced by the Debtors do not include the debts owed to all Petitioning Creditors, including those with final and unappealable judgments, nor those of other creditors that have filed proofs of claim.

24. On June 9, 2017, St. James Security Services, Inc., Champion Petroleum, Inc., and Control Force, Corp., (collectively, the “Betterecycling Final Judgment Creditors”) and the Lenders filed an involuntary bankruptcy petition against Betterecycling (the “Betterecycling Involuntary Petition”). See, Exhibit H.

25. St. James Security, Inc., a petitioning creditor, is the holder of a final and unappealable judgment against Betterecycling in the amount of \$60,020.48, issued on December 8, 2016 by the Puerto Rico Court of First Instance, San Juan Section, under Case No. K CD2016-0453. See, Exhibit B.

26. Control Force Corporation, a petitioning creditor, is the holder of a final and unappealable judgment against Betterecycling in the amount of \$56,872.14, issued on March 7, 2017 by the Puerto Rico Court of First Instance, San Juan Section, under Case No. K CD2016-2093. See, Exhibit I.

27. Champion Petroleum, Inc., a petitioning creditor, is the holder of a final and unappealable judgment against Betterecycling in the amount of \$5,204.88, issued on March 20, 2017 by the Puerto Rico Court of First Instance, San Juan Section, under Case No. K CM2017-0361. See, Exhibit J.

28. On June 29, 2017, the Internal Revenue Service filed Proof of Claim No. 1 in the amount of \$312,275.81. See, Proof of Claim No. 1

29. On July 5, 2017, the Puerto Rico Telephone Company d/b/a Claro, filed Proof of Claim No. 2 in the amount of \$2,805.13. See, Proof of Claim No. 2

30. On July 7, 2017, NY Wiping Industrial Products, filed Proof of Claim No. 3 in the amount of \$7,705.83. See, Proof of Claim No. 3

31. On August 1, 2017, Carolina Building Material filed Proof of Claim No. 4 in the amount of \$993.47. See, Proof of Claim No. 4

32. On August 1, 2017, Jorge L. Resto Rosado filed Proof of Claim No. 5 in the amount of \$25,702.81. See, Proof of Claim No. 5

33. On August 4, 2017, Yahaira Rodríguez Rivera filed Proof of Claim No. 6 in the amount of \$15,991.54. See, Proof of Claim No. 6

34. On August 8, 2017, NG Solutions, LLC filed Proof of Claim No. 7 in the amount of \$902,858.33. See, Proof of Claim No. 7

35. On September 5, 2017, RC Guardianes, Inc. filed Proof of Claim No. 8 in the amount of \$29,363.26. See, Proof of Claim No. 8

36. On September 13, 2017, S&S Imports, Inc. filed Proof of Claim No. 9 in the amount of \$11,451.36. See, Proof of Claim No. 9

37. On October 24, 2017, Puma Energy Caribe LLC filed Proof of Claim No. 10 in the amount of \$2,566,884.21. See, Proof of Claim No. 10

38. On October 31, 2017, CRIM filed Proof of Claim No. 11 in the amount of \$4,168.77. See, Proof of Claim No. 11

39. On October 31, 2017, CRIM also filed Proof of Claim No. 12 in the amount of \$215,054.09. See, Proof of Claim No. 12

40. Documents produced by Betterrecycling as part of the ongoing discovery proceedings also include an 'Aging Report' on (allegedly) all of Betterrecycling's 'Aged Open Payables' for fiscal year 2017. In such report, Betterrecycling lists (allegedly) all of its

outstanding current debts, and the length of time that such debt has remained outstanding.² In summary, the reports shows:

<u>Aged Open Payables – Aging Report as of 6/30/2017</u>				
<u>Total</u>	<u>Current</u>	<u>31-60 days</u>	<u>61-90 days</u>	<u>Over 90 Days</u>
\$17,186,901.39	\$118,942.73	\$71,691.36	\$4,178.27	\$16,957,259.71

See Exhibit K.

41. The ‘General Ledger Reconciliation’ included in the ‘Aging Report’ ending on June 30, 2017 and produced by Betterrecycling, reflects that 98.66% of Betterrecycling’ accounts payable are over 90 days old. See, Exhibit K at Page 8.

42. The Debtors have accumulated a substantial amount of litigation related to claims from suppliers and other entities. As of the Petition Date, a considerable amount of pending legal actions have been commenced against Betterrecycling before the Puerto Rico Court of First Instance, as well as before the U.S. District Court for the District of Puerto Rico. See, Exhibit L.

43. On June 27, 2017, Betterrecycling filed a “Motion of the Alleged Debtor Betterrecycling Corporation to Dismiss the Involuntary Bankruptcy Petition”, together with the Betterroads’ Motion to Dismiss, the “Motions to Dismiss”). See Docket No. 27, Case No. 17-04157(ESL).

WHEREFORE, the Lenders respectfully move and pray for this Court to accept their supporting Statement of Uncontested Material Facts in accordance to Fed. R. Civ. P.56, as made applicable to these proceedings by virtue of Fed. R. Bankr. P. 7056 and 9014(c), as well as Rule 56 of the Local District Court Rules, made applicable hereto pursuant to Local Bankr. R. 1001-

² The Lenders are presenting these documents produced by the Debtors as they provide an admission that they are not paying their debts as they become due, as detailed below. The Lenders reserve the right to challenge the accuracy or completeness of these documents as, based on a preliminary review, the Lenders note that the list of debts produced by the Debtors do not include the debts owed to all Petitioning Creditors, including those with final and unappealable judgments, nor those of other creditors that have filed proofs of claim.

1(b), and respectfully request that this Court enter summary judgment and enter an order for relief in the above-referenced Involuntary Petitions.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this November 13th, 2017.

WE HEREBY CERTIFY that on this same date, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all CM/ECF participants in the case, including the Debtors.

O'NEILL & BORGES LLC

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